

In the High Court of Punjab and Haryana at Chandigarh

C.E.A. No. 44 of 2006

Date of Decision: 4.10.2007

Commissioner, Central Excise Commissionerate, Jalandhar

...Appellant

Versus

M/s Dhillon Kool Drinks and Beverages Limited, G.T. Road, Phillaur,
District Jalandhar

...Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Sanjeev Kaushik, Advocate,
for the appellant-revenue.

Mr. Amit Jhanji, Advocate,
for the respondent-assessee.

M.M. KUMAR, J.

This appeal has been filed by the revenue under Section 35G of the Central Excise Act, 1944 (for brevity, 'the Act'), against the order dated 12.7.2005 (A-3), passed by the Customs Excise & Service Tax Appellate Tribunal, New Delhi (for brevity, 'the Tribunal'), in Appeal No. E/S/1414/05 & E/1890/05. The revenue has raised following question of law for determination of this Court:-

“Whether Commissioner (Appeals) is still vested with the powers to remand back cases to the adjudicating authority consequent to the specific amendment in this regard carried out by the Finance Act, 2001 w.e.f. 11.5.201.”

After hearing learned counsel for the parties, perusing the Order-in-Original dated 5.2.2004, passed by the Adjudicating Authority (A-1), Order-in-Appeal dated 25.2.2005, passed by the Commissioner (Appeals) (A-2) and order dated 12.7.2005, passed by the Tribunal (A-3), we find that the matter is not *res integra*. The question of law raised in the instant appeal has already been decided by us in the cases of same parties, being CEA No. 11 of 2006 (Commissioner, Central Excise Commissionerate, Jalandhar v. B.C. Kataria, General Manager, M/s Dhillon Kool Drinks and Beverages Limited) and CEA No. 12 of 2006 (Commissioner, Central Excise Commissionerate, Jalandhar v. M/s Dhillon Kool Drinks and Beverages Limited), decided on 6.9.2007. It is apposite to mention here that in the judgment dated 6.9.2007, we have also referred to an earlier Division Bench judgment of this Court in the case of **Commissioner of Customs, Amritsar v. M/s Enkay (India) Rubber Co. Pvt. Ltd.** (CUSAP No. 20 of 2006, decided on 8.3.2007) on which reliance has been placed by learned counsel for the appellant-revenue at the time of issuance of notice of motion.

Therefore, the ratio of our judgment dated 6.9.2007 as well as Division Bench judgment in the case of M/s Enkay (India) Rubber Co. Pvt. Ltd. (supra) would squarely apply to the facts of the present case and the appeal filed by the revenue deserves to be allowed.

For the reasons aforementioned this appeal succeeds. Order dated 12.7.2005 (A-3), passed by the Tribunal as also the orders passed by the Commissioner (Appeals) are set aside. These matters are sent back to the Commissioner (Appeals) for decision in accordance with law. As the matter has been pending before the Tribunal as well as this Court, we deem it just and appropriate to direct the Commissioner (Appeals) to decide the appeals within a period of four months from the date of receipt of certified copy of this order.

The Appeal stands disposed of in the above terms.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

October 4, 2007

Pk Kapoor